IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL STAMP NO. 23656 OF 2005

WITH

CIVIL APPLICATION NO. 4510 OF 2005

Ramesh Pandit ..Appellant

versus

The Municipal Corporation of

Gr. Mumbai & Ors. ..Respondents

Mr. C. G. Gavnekar with S. Singh for the Appellant.

Mr. J. J. Xavier for the Respondent No.1.

Miss. H. Shah for Respondent Nos. 2(a), 2(b) & 2(c).

CORAM : D. G. DESHPANDE,J.

DATE : 19TH OCTOBER,2005

ORAL ORDER :

1. Heard learned Counsel for the Appellant, Respondent No.1 and Respondent Nos. 2(a), 2(b) and 2(c).

2. Appellant is the Original Plaintiff. The appellant has challenged the order of the trial court dated 10.10.2005. The suit was filed by the plaintiff earlier. In the meantime DMC passed an order. The plaintiff took out Chamber Summons to amend the plaint so that he could challenge DMC's order. When the Chamber Summons came for hearing, this impugned order came to be passed and the trial court has observed that perusal of plaint shows that it does not disclose cause of action. It also further shows that the suit is filed after receipt of notice under Section 351 and when plaintiff's representation filed in response to the said notice, was pending for consideration before the DMC of 'N' Ward, then admittedly at the time of filing of the suit final order was not passed and the court held that Section 351 does not give cause of action to approach the court of law unless final order is passed adverse to the plaintiff's interest in the property, and, therefore the suit was dismissed on that day and chamber summons and notice of motion were also dismissed.

3. This matter is for admission. By consent, it was taken for final hearing. Appeal is admitted.

4. This order of the dismissal of the suit is obviously wrong. The suit could not have been dismissed when the matter is fixed for deciding the chamber summons. If the chamber summons was disallowed then it could have resulted in natural consequences, but dismissal of the suit on that day, was totally wrong. Therefore this order is to be set aside. I, therefore, pass the following order :

ORDER

. Appeal is allowed.

. Order of the dismissal of the suit and the chamber summons and notice of motion is set aside. Suit is restored to file. City Civil Court to decide the chamber summons No. 33 of 2004 after hearing the parties along with notice of motion No. 2921 of 1998.

. Parties to appear before the City Civil Court on 22.11.2005. The chamber summons to be decided within one month thereafter.

. Statusquo to continue as per the earlier order.

. Certified copy expedited.

19.10.2005 (D.G. DESHPANDE, J.)